

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 14580 OF 2004(I)

PETITIONER:

THE KADUTHURUTHY URBAN CO-OP. BANK LTD.,
NO.K.399, KADUTHURUTHY, REP. BY ITS
GENERAL MANAGER, SHRI CYRIAC MATHEW,
S/O. LATE P.K. MATHEW, AGED 52.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN
SRI.PRAVEEN K. JOY

RESPONDENTS:

1. STATE OF KERALA, REP. BY SECRETARY TO
GOVERNMENT, DEPARTMENT OF REVENUE,
GOVERNMENT, SECRETARIAT, TRIVANDRUM.
2. THE LAND REVENUE COMMISSIONER,
PUBLIC OFFICE BUILDING, MUSEUM JUNCTION,
TRIVANDRUM.
3. REVENUE DIVISIONAL OFFICER,
PALA, KOTTAYAM DISTRICT.
4. THE TAHASILDAR, VAIKOM TALUK,
KOTTAYAM DISTRICT.
5. SAVITHRI KARUNAKARAN, AGED ABOUT 61,
W/O. LATE KARUNAKARAN, KUNNUMCHIRA,
MUTTUCHIRA P.O., VAIKOM TALUK,
KOTTAYAM DISTRICT.
6. SHINE, S/O. KARUNAKARAN,
KUNNUMCHIRA, MUTTUCHIRA P.O.,
VAIKOM TALUK, KOTTAYAM DISTRICT.

WP(C) 14580/2004

7. SHIJU, S/O. KARUNAKARAN,
KUNNUMCHIRA, MUTTUCHIRA P.O., VAIKOM TALUK,
KOTTAYAM DISTRICT.
8. SHALI, W/O. MONUJI AND D/O. KARUNAKARAN,
ELLUKUNNEL, MELAMPARA KARA, THALAPPALAM VILLAGE,
MEENACHIL TALUK, KOTTAYAM DISTRICT.
9. SHINY, W/O. AJITH AND D/O. KARUNAKARAN,
KOLLAM PARAMBIL HOUSE, MUHAMMA P.O.,
ALAPPUZHA DISTRICT.
10. LEESHA, W/O. ABHAYA SHARMA,
AND D/O. KARUNAKARAN, KULATHUNGAL HOUSE,
MOOTHAKUNNAM P.O., N. PARUR.
11. SHEEBA, W/O. HARISH, SREERAMATHU THARA,
ULLALA P.O., VAIKOM, VAIKOM TALUK.
12. MATHEW JACOB, KOTTARATHIL,
AGED ABOUT 45, MUTTUCHIRA.

R12 BY ADV. SRI.C.C.THOMAS
SRI.P.BABU KUMAR
GOVERNMENT PLEADER SRI. SHYSON P. MANGUZGA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/11/2007, THE COURT ON 9.2.2007, DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

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| EXT.P1 | TRUE PHOTOSTAT COPIES OF THE AWARD PASSED BY THE ASST. REGISTRAR OF CO-OP. SOCIETIES DATED 16.9.1996. |
| EXT.P2 | TRUE PHOTOSTAT COPY OF THE JUDGMENT DATED 20.1.2003 PASSED IN O.P. NO. 9303/2000 OF THIS COURT. |
| EXT. P3 | TRUE PHOTOCOPY OF THE PROCEEDINGS DATED 31.7.2003 OF CONFIRMATION ISSUED BY THE 3RD RESPONDENT. |
| EXT.P4 | TRUE PHOTOCOPY OF THE PROCEEDINGS DATED 1.4.2004 COMMUNICATED TO THE PETITIONER ON 15.4.2004. |
| EXT.P5 | TRUE PHOTOSTAT COPIES OF THE MORTGAGE DEED NO. 660/1995 DATED 20.2.1995. |
| EXT.P6 | TRUE PHOTOSTAT COPY OF THE MORTGAGE DEED NO. 661/1995 DATED 2.2.1995. |
| EXT.P7 | TRUE PHOTOSTAT COPY OF THE MORTGAGE DEED NO. 689/1995 DATED 20.2.1995. |
| EXT.P8 | TRUE PHOTOSTAT COPY OF SALE DIARY IN E.A. NO. 804/1997 DATED 27.11.1995. |
| EXT.P9 | TRUE PHOTOSTAT COPY OF SALE DIARY IN E.A. NO. 826/1997 DATED 27.11.1998. |
| EXT.P10 | TRUE PHOTOSTAT COPY OF SALE DIARY IN E.A. NO. 810/1997 DATED 27.11.1998. |
| EXT.P11 | TRUE PHOTOSTAT COPY OF SALE DIARY IN E.A. NO. 810/1997 DATED 27.11.1998. |
| EXT.P11 | TRUE PHOTOSTAT COPY OF THE LETTER FOR CONFIRMATION DATED 10.6.1999. |
| EXT.P12 | TRUE PHOTOSTAT COPY OF THE LETTER FOR CONFIRMATION DATED 23.4.2001. |
| EXT.P13 | TRUE PHOTOSTAT COPY OF THE LETTER FOR CONFIRMATION DATED 23.4.2001. |
| EXT.P14 | TRUE PHOTOSTAT COPY OF THE STATEMENT PERTAINING TO THE TRANSACTION AS ON TODAY. |

WP(C) 14580/2004

:2:

RESPONDENTS' EXHIBITS:

EXT.R12(a) PHOTOCOPY OF THE FORM OF PROCLAMATION OF
LAND NO. G1-1588/97 DATED 21.4.2004 ISSUED BY THE
4TH RESPONDENT.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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W.P.(C) NO. 14580 OF 2004

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DATED THIS, THE 9TH DAY OF FEBRUARY, 2007

J U D G M E N T

Petitioner is a Co-operative Bank registered under the Kerala Co-operative Societies Act, doing business in Kottayam District.

2. According to the petitioner, Respondents 5 to 11 are the legal heirs of Late Sri. Karunakaran, Kunnumchirayil, Muttuchira, who died on 4.7.1992. Sri. Karunakaran and his son Shiju, the 7th respondent had availed three business loans from the petitioner Bank on 9.6.1992 and as security for the said loans, it is stated that they executed a mortgage deed Nos. 1408/1992, 1409 & 1410/2002. After the death of Karunakaran, his legal representatives - Respondents 5 to 11 availed three other loans which were secured as per registered mortgage deed Nos. 659, 660 and 661/1995, executed on 22.2.1995. While accepting the mortgage, they verified the registers of the sub registry by taking out the encumbrance certificate and found that the only mortgages in their favour bank was the existing liability. In connection with the above loan transaction, title deeds pertaining to 1 Acre and 50 cents of land comprised in Sy. Nos. 871/5 and

871/4 covered by Sale deed No. 878/1968 of SRO, Kaduthuruthy standing in the name of Late Karunakaran was deposited with the petitioner Bank. Subsequent to the death of Karunakaran and after availing of loans by respondents 5 to 11, the transaction became a non performing one and subsequently, recovery proceedings were initiated against respondents 5 to 11 by resorting to the remedies under Section 69 of the Kerala Co-operative Societies Act by filing arbitration cases. Eventually, an award was passed on 16.9.1996, copy of which is produced as Ext.P1 series in this writ petition. Even after the award, the judgment debtors did not close the transaction and hence the petitioner instituted execution proceedings and the mortgaged properties were put to sale in public auction. As there was no bidders, the Bank sought leave and bid the property in auction and the matter was communicated to Respondents 5 to 11. The sale was confirmed and confirmation letter was given on 10.6.1999 to the Bank, which assumed possession of the property. While so, petitioner came to know that the property in question was going to be sold by the 4th respondent for certain abkari dues allegedly due from Late Karunakaran. Though the petitioner gave a report dated 2.9.1999 to the Village Officer, Muttuchira, through its General Manager ; ignoring the same, the Tahsildar, Vaikom issued sale notification for sale of the property for the alleged abkari dues

amounting to Rs. 3,53,281/-. No notice was issued to the petitioner, who have a valid, substantial and subsisting interest in the property which was alerted through the report submitted to the Village Officer and in such circumstances, petitioner filed O.P. 9303/2000 before this Court, which was disposed of by Ext.P2 judgment dated 20.1.2003, directing to consider the claim of the petitioner before confirmation of sale. Thereafter, petitioner filed an application before the 4th respondent on 22.1.2003, to stop the sale proceedings and accordingly, the sale was adjourned to 7.2.2003 on which day also petitioner filed another application. But ignoring the objections and claims of the petitioner, the Tahsildar conducted the sale on 7.3.2003 in favour of the 12th respondent and thereafter the sale was confirmed on 31.7.2003 as evidenced by Ext.P3 produced herein. On receipt of Ext.P3, though the petitioner preferred a revision before the second respondent, without conducting a proper hearing, the same was dismissed by Ext.P4 proceedings dated 1.4.2004. Hence petitioner impugns Exts.P3 and P4.

3. It is urged that Ext.P3 has been passed without issuing notice to the petitioner in spite of the fact that petitioner is interested in the property, that the property is at present in the ownership and possession of the petitioner, that the property having a value of Rs. 10 lakh at present has been put in public auction for recovery of a paltry sum of Rs. 3,53,000/-

which was bid in auction for an amount of Rs. 5,25,000/-, that the proceedings jeopardize the interest of the petitioner and mala fides and oblique motives writ large on the face of Ext.P3 which is liable to be set aside. According to the petitioner, Ext.P4 is vitiated since none of the grounds urged by them has been considered by the second respondent while passing Ext.P4, that the abkari dues have not been declared as public revenue due on land in the purview of Section 2(J) of the Kerala Revenue Recovery Act, that petitioner Bank is a secured creditor as has a first charge created upon the property to be sold, that no notice has been issued to the petitioner by respondents 3 and 4, that petitioner is prepared to invoke Section 51 and tender the amount due to the Government and acquire the status of a judgment creditor as contemplated under Section 47 of the Kerala Revenue Recovery Act,; but the same will be possible only if the entire proceedings are set aside. On the aforesaid grounds, it is prayed that Exts.P3 and P4 be quashed and a direction be issued commanding respondents 3 and 4 to consider the claim preferred by the petitioner.

4. Respondent No.12 who is the auction purchaser filed a counter affidavit inter alia contending as follows: As per Rule 5(11) of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974, all the auction purchasers in whose names the sale of shops are declared by the auctioning officer at

the time of auction shall not be permitted to transfer or encumber any of the assets to the detriment of the amount that may become due under the contract including the deposit due from them and such transactions, if any, notice shall be deemed void to the extent of the sum due under such contract and this is the legal position applicable to late Karunakaran, since the contract was for the period 1983-84. If any transfer is made or any encumbrance is created in any of the assets, the same will be void and hence the mortgage of the properties by the legal heirs of Karunakaran, who are respondents 5 to 11 with the petitioner Bank is void as per Rule 5(11) of the Rules. It is an admitted case that solvency certificate dated 28.2.1983 was used by the defaulter for bidding Shop Nos. 17 and 23/1983-84 of Kuruvilangadu Excise Range and the properties covered by such solvency certificate and other assets at the time of contract are not liable to be transferred as per Rule 5(11) of the Rules and hence Exts.P3 and P4 are not liable to be interfered with. He purchased the property for an amount of Rs. 5,25,500/- and the total extent is 1.37.289 acres of landed property in a village area and so the sale consideration is more than the market value. The sale is confirmed by the Revenue Divisional Officer, the third respondent herein as per proceedings dated 31.7.2003, that the revision petition of the petitioner Bank was dismissed by order dated 1.4.2004, as

per Ext.P4, the properties were handed over to the 12th respondent and proclamation of purchase of land was notified by the Tahsildar on 21.4.2004, as evidenced by Ext.R12(a). He is in possession of the property and agreed to sell the same to some other persons since the sale consideration was already paid by him after availing loan from private persons. The first respondent admittedly received Rs. 5,25,500/- as early as on 7.3.2003. The Board of Directors of the petitioner Bank sanctioned the loan after knowing that late Karunakaran and his legal heirs are having huge liabilities as arrears towards Government and the petitioner in collusion with respondents 5 to 11 and late Karunakaran helped them to cheat the Government. If a vigilance enquiry is conducted in respect of the mortgages and circumstances lead to the mortgages, it will clearly reveal the conspiracy for cheating Government between them and the petitioner has no bona fides in approaching this Court. Ext.P4 order can be challenged before the Government by way of second revision under Section 83(2) of the Kerala Revenue Recovery Act. He has developed the property by investing huge amount and the petitioner has no preferential right. Hence this writ petition is liable to be dismissed.

5. On behalf of the second respondent - the Land Revenue Commissioner, a counter affidavit is filed by the Assistant Commissioner,

Land Revenue. It is averred that as per revenue recovery certificate B7-6583/97 of the District Collector, Kottayam for realisation of Rs. 3,53,201/- along with 12% interest on Rs.1,46,500/- from 1.2.1996 being the abkari arrears for the period 83-84 on T.S. No. 17 and 23 of Kuruvilangadu Range due from the legal heirs of Kochukunju Karunakaran, Kunnamchira, Muttuchira Village in Vaikom Taluk, the Tahsildar, Vaikom initiated revenue recovery steps against the defaulters to realize the dues and their movable properties were attached and sold in public auction on 15.12.1997 for an amount of Rs. 27,000/- and the said amount was adjusted towards the abkari dues. An extent of 1.43289 Acres of land in Sy. No. 871/4,5 and 50 cents of land in Sy. No. 790/3A of Kuttuchira Village owned by the defaulter had been attached and notice under Section 36 of the Revenue Recovery Act was issued to all legal heirs of late Kochu Kunju Karunakaran. Then attached properties excluding 6 cents were notified for sale on 3.9.1999; but the sale was postponed to 17.9.1989 for want of sufficient bidders. In the meantime, the General Manager, Kaduthuruthy Urban Co-operative Bank filed an objection petition claiming that the landed properties in Sy. No. 871/4.5 notified for sale was mortgaged to the Bank by late Kochukunju Karunakaran and the Bank bid the land in its favour on 27.11.1998. Hence the sale posted to 17.9.1999 could not be

conducted. The details of the landed properties mentioned in the solvency certificate produced by Kochukunju Karunakaran was gathered from the Assistant Excise Commissioner, Kottayam and on verification of the same, it was understood that the landed properties in Sy. No. 871/4,5 have been included in the solvency certificate and the same lands were also seen mortgaged in 1992 and 1995 to the Bank. Thus the Government had a first charge over those properties and a reply to that effect was given to the Bank. The sale was again notified to 28.3.2000 and the Bank filed O.P. 9303/2000 challenging such sale. The said original petition was disposed of on 13.2.2003 and thereafter, revenue recovery steps were resumed and sale notice under Section 49 of the Revenue Recovery Act was issued to all the legal heirs of late Kochukunju Karunakaran. In view of the stay order in O.P. 1722/2003 filed by Sri. Kurian Joseph, sale of landed property extending 50 cents in Sy. No. 790/3A Muttuchira Village was adjourned and the rest of the property having an extent of 1.37.239 Acres in Sy. No. 871/4, 5 in Muttuchira Village was bid for Rs. 5,25,500/- in the auction sale held on 7.3.2003. In the light of the directions contained in the judgment in O.P. 9303/2000, the Bank authorities were also called for hearing by the Revenue Divisional Officer, Pala before confirming the sale. The contention of the Bank that they had got first charge over the property was

rejected and the sale was confirmed in the name of Mathew Jacob, as per Ext.P2 order dated 31.7.2003. Petitioner Bank filed a revision before the Land Revenue Commissioner, which was rejected by Ext.P4 order. The proclamation of purchase of land in Appendix - VII in connection with the sale of property was also issued to the concerned parties by the Tahsildar, Vaikom, on 21.4.2004. It was in the mean time that the petitioner Bank filed this writ petition.

6. The grounds raised in the writ petition are contended to be untenable. The sale was confirmed on 31.7.2003 as per the Revenue Recovery Act and Rules. It is further contended that as per Section 44(2) of the Kerala Revenue Recovery Act, any transfer of immovable property made by the defaulter after public revenue due on any land from him has fallen in arrears with intent to defeat or delay the recovery of such arrear shall not be binding upon the Government. As per Section 3 of the Kerala Revenue Recovery Act, the public revenue due on land shall be the first charge on that land. Thus, the abkari arrears for the period 1983-84 being the first charge over the properties, the revision petition was dismissed observing this fact also. Hence the second respondent also prayed for dismissal of the writ petition.

7. For and on behalf of the first respondent, a separate counter is filed by the Under Secretary, Revenue Department, Secretariat. It is stated that Karunakaran died on 4.7.1992 after availing loan from the Bank and on default of the loan, petitioner Bank filed arbitration case and an award was passed. After that the legal heirs of the deceased closed all the loan on 15.2.1995. and thereafter on 28.2.1995 they availed three business loans amounting to Rs. 50,000/- each, by executing another mortgage deed by Respondent Nos. 5, 7 and 9 in the Sub Registry Office, Kaduthuruthy, in favour of the Bank. For the said loan also, the same property was pledged and the original document was pledged in the Bank for that purpose. On default, the Bank filed arbitration case in this case also and an award was passed on 16.9.1996. It is stated that valid requisition for realizing the abkari arrears for the period 1983-84 on T.S. No. 17 and 23 of Kuruvilangad Range from the legal heirs of late Karunakaran was received and hence the movable properties of the defaulters were attached and sold in public auction on 15.12.1997. Thereafter, an extent of 1.543.289 acres of land in Sy. No. 871/4,5 and 50 cents of land in Sy. No. 790/3A of Muttuchira Village were attached and excluding 6 cents, those properties were notified for sale on 3.9.99. The first respondent also referred to O.P. Nos. 9303/2000 and 1722/2003, which has already been referred to while

dealing with the counter affidavits filed by the other respondents. Hence to avoid repetition, they are not reiterated herein. According to the first respondent, abkari arrears has got first charge over the properties. It is further contended that the Supreme Court in **Dena Bank v. Bhikhabhai Prabhaudas Pareksh & Co.** ((2000) 5 SCC 694) has held that the State has got first charge over the property of the defaulter. Petitioner had been heard before confirmation of the sale and the same was done as per the Revenue Recovery Act. Placing reliance on Section 44(2) of the Revenue Recovery Act, it is contended that transfer of the immovable property by the defaulter after public revenue due on any land from him has fallen in arrear, with intent to defeat or delay recovery of such arrears shall not be binding upon the Government. They also prayed for the dismissal of the writ petition.

8. Heard the parties. The petitioner contended that the solvency certificate issued in favour of late Karunakaran, at the time of bidding in auction T.S. No. 17 and 23/ 1983-84 of Kuruvilangad Range and T.S. 39/83-84 of Kaduthuruthi Range did not include the property in question and prayed that the records be called for. Accordingly, records were called for and the entire records were produced with a memo.

9. I shall now deal with the contention regarding as to whether the respondent State has got a first charge over the property in question. I have perused the file. The solvency certificate contained in page 449 of the file was in favour of Karunakarann. The certificate was issued as applied for by him. The property offered is 3 Acres 19 cents of land in Sy. No. 790/3A, 806/1, 791/18/1, 791/18/2, 791/7, 871/4 and 871/5 and the building. The properties are stated to be situated in Vaikom Taluk, Kaduthuruthy Village. The value shown is Rs. 2,02,500/-. There is a solemn affirmation on the above details by Karunakaran on 28.2.1983. The certificate thereunder issued by the Tahsildar certifying that Kochukunju Karunakaran, residing at Kunnamchirayil House, Kaduthuruthy Village, Vaikom Taluk is solvent to the extent of Rs. 1,75,000/- on his own immovable properties over which he has independent salable right and which are free from encumbrance as on 15.2.1983. The certificate is issued on 28.2.1983. What has been sold in public auction for recovery of the abkari dues under the Revenue Recovery Act, which is the subject matter of the writ petition is an extent of 1.37.389 Acres of land in Sy. No. 871/4 and 871/5 of Muttuchira Village. Thus, what has been sold in public auction forms part of the extent of land in respect of which the solvency certificate was issued as early as on 28.2.1983. The sale conducted was for realization of the abkari dues for the period 1983-84 of

T.S. Nos. 17 and 23 of Kuruvilangadu Range. By virtue of Rule 5 (11) of the Abkari Shops (Disposal in Auction) Rules, 1974, there is a first charge in favour of the Government. Rule 5(11) of the relevant rules thus:

"Auction purchasers in whose names the sales of shops are declared by the auctioning officer at the time of auction shall not be permitted to transfer or encumber any of their assets to the detriment of the amount that may become due under the contract including the deposit due from them and such transactions, if any, notice shall be deemed void to the extent of the sum due under such contract."

10. In view of the clear provisions contained in Rule 5(11) as above, any encumbrance created of the assets covered by the solvency certificate will be deemed to be void to the extent of the sum due under such contract. Thus, the contention of the petitioner that the mortgage created in their favour is the first charge has to be repelled. Admittedly, the mortgage was created much later to the auction bid based on the solvency certificate issued as referred to above.

11. In this connection, I may refer to the decision in W.A. 3023/2001 arising out of O.P. 8245/1995 filed by the petitioner Bank inter alia raising the same contention which was however repelled by this Court.

Of course, the parties are different but the principle to be applied is the same.

12. The petitioner Bank filed O.P. 8245/1995 before this Court wherein they challenged the revenue sale conducted for recovery of certain abkari dues. In that case the 5th respondent one Mr. Joy, son of Kurian offered the property concerned and he gave solvency certificate. Based on the same, he bid the right to the abkari shops under the Abkari Shops (Disposal in Auction) Rules, 1974, on 8.3.1985. Subsequently, on 15.3.1985, he created a mortgage in support of his property in favour of the petitioner Bank. The State brought the property to sale under the Revenue Recovery Act and respondent No.6 therein purchased the property. Petitioner Bank put forward a claim that since the property was the subject matter of mortgage in favour of the Bank created on 15.3.1985 the Bank is entitled to proceed against the property in preference to the claim made under the Abkari Act. That claim was rejected by the revenue Recovery authorities - both by the appellate authority as well as the revisional authority. It was thereafter that the writ petition was filed seeking to quash the various orders passed, Exts.P1, P2 and P4 referred to therein. The learned Single Judge, after considering the relevant materials held that the liability created in favour of the State would prevail over the mortgage and

right obtained by the Bank on the strength of that mortgage. The original petition was dismissed. There was a writ appeal as W.A. 3023/2001 which was also dismissed confirming the decision of the learned Single Judge. It was held that on a scrutiny of Rule 5(11) of the Abkari Shops (Disposal in Auction) Rules, it is seen that respondent No.5 was not permitted to transfer or encumber any of his assets to the detriment of the amount that would become due under the contract including the due deposit from him when he bids for and obtains the right to vend liquor in terms of the Abkari Shops (Disposal in Auction) Rules. The moment he becomes a bidder, who is successful, the rule envisages that he cannot create any encumbrance on the property. This additional reason was also stated to support the conclusion of the authorities and of the learned Single Judge. Accordingly, even at the admission stage, the writ appeal was dismissed.

13. Thus, it is seen that the property in question which was solved for abkari dues for the year 1983-84 and there was a first charge in favour of the Government and any transaction subsequently entered into by Karunakaran or his legal heirs in respect of the very same property can only stand subject to the realization of the dues under the Abkari Act from the defaulter. In the circumstances, petitioner Bank cannot have any priority for their debt over the abkari dues.

14. Section 28 of the Abkari Act reads thus:

"All duties, taxes, fines and fees payable to the Government direct under any of the foregoing provisions of this Act or of any license or permit issued under it, and all amounts due to the Government by any grantee of a privilege or by any farmer under this Act or by any person on account of any contract relating to the Abkari Revenue may be recovered from the person primarily liable to pay the same or from his surety (if any) as if they were arrears of Land Revenue and in case of default made by a grantee of a privilege or by a farmer, the Commissioner may taken grant or farm under management at the risk of the defaulter or may declare the grant or farm forfeited, and resell it at the risk and loss of the defaulter. When a grant or farm is under management under the section, the Commissioner may recover any moneys due to the defaulter by any lessee or assignee as if they were arrears of Land Revenue."

15. In **Gourikutty Amma v. District Collector** (1975 KLT 29) this Court held that the amounts due under the Abkari Act are recoverable as if they are arrears of land revenue. It was also held in **A. Damodaran v. State of Kerala** (1976 SC 1533) that the liability to satisfy the dues arising out of a bid is enforceable under Section 28 quite apart from any contractual liability.

16. Thus, by virtue of Section 28 of the Abkari Act, the State is entitled to recover the abkari dues by putting Revenue Recovery Act in motion. Section 5 of the Revenue Recovery Act provides the manner in which such public revenue is to be recovered. One such mode is by attachment and sale of the defaulter's property, both movable and immovable. Chapter III of the Revenue Recovery Act deals with the procedure to be followed for attachment and sale of immovable property. As per Section 34 thereunder, a written demand has to be served on the defaulter specifying the name of the defaulter, the amount of the arrear of public revenue due on land for which the attachment is being made and further details as to be prescribed and the time allowed for such payment and if within the time prescribed, if any objection is received from the defaulter, the same has to be disposed of and in case when the defaulter neglects to pay, the Collector or the authorized officer is empowered to proceed to recover the arrears by attachment and sale of the immovable property of the defaulter as envisaged by Section 35. The manner in which the immovable property has to be sold is also prescribed under the Act. As per Section 36 of the said Act, the attachment has to be effected by affixing a notice thereof to some conspicuous part of the immovable property to be attached and by serving a copy on the defaulter. A notice has also to be

published. The attachment of the immovable property will become effective on the date of on which notice under sub-section (1) of Section 36 was affixed on the property. As per Section 44 of the Act, any engagement entered into by the defaulter with anyone in respect of any immovable property after the service of the written demand on him shall not be binding upon the Government. Any transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrear, with intent to defeat or delay the recovery of such arrear, shall not be binding upon the Government. There are also provisions for dealing with the claim of release or attachment by third parties as envisaged by Sections 46 and 47 of the Act. Section 49 of the Act prescribes the procedure for sale of immovable property. the sale by public auction is to the highest bidder after fixing the time and place by the District Collector or the authorized officer having jurisdiction. Previous to the sale, the District Collector or the authorized officer, as the case may be, shall issue notice specifying the name of the defaulter and the other details shall be duly served in public on the defaulter.

17. On a reading of the above provisions, it can be seen that before the sale of the immovable property, it has to be preceded by an attachment of property after due notice to the defaulter. After attachment, giving all

the details of the sale, a notice has to be issued in the language of the Village where the property is situated. In this case, as contemplated under Section 49(2) of the act, notice as prescribed had been issued on various dates. The legal heirs of the defaulter late Karunakaran was given due notice of the sale of the immovable property and acknowledged by them. In O.P.17424/1997 Savithri Karunakaran challenged the proceedings initiated under the Revenue Recovery Act for recovery of the sum due from her husband inter alia contending that the immovable property sought to be attached belong to her and not to the deceased. But this Court was not inclined to accept the contention since the petitioner had ample remedies under the Revenue Recovery Act to raise a claim as regards the immovable properties. In O.P. 9303/2000 petitioner herein moved this Court inter alia contending that there is a mortgage in favour of the Bank and that they had obtained an award. This Court, while disposing of the original petition by judgment dated 28th January, 2003 observed as follows:

"..... Petitioner is only a bank to which the property in question had been mortgaged and later proceeded against and award has been obtained. All these are subsequent to the revenue debt had fallen due on the owner of the property. When this is an admitted position, necessarily, the impact of Section 44 of the Revenue Recovery Act has to be taken into consideration before confirming the sale the petitioner shall also be

heard by the Collector concerned with regard to its interest over the property."

18. Thereafter petitioner was also heard in the matter before confirming the sale. Their contentions were considered and rejected against which they filed a revision. That was also dismissed. As per Ext.P3 proceedings of the Revenue Divisional Officer, the contention of the petitioner that they had a first charge over the property was repelled after finding that the property was attached for realization of the abkari arrears due from late Karunakaran relating to the period 1983-84 and based on the requisition made by the Assistant Excise Commissioner for realization of the arrears related to T.S. Nos. 17 and 23 of Kuruvilangad Range for the period 1983-84 were taken and the Tahsildar initiated Revenue Recovery proceedings against Smt. Savithri Karunakaran and six others. Notice under Sections 7 and 34 of the Act were issued on 10.3.1997 and notice under Section 36 was also served on 1.7.1999. The movables belonging to the defaulters were attached and sold in public auction for an amount of Rs. 27,000/-. Since the defaulters failed to remit the dues, the attached property was notified for sale and in the auction held on 7.3.2003 and out of the nine persons participated, the 12th respondent Mathew Jacob bid the land for an amount of Rs.5,25,500/-. Pursuant to the

judgment in O.P. 9303/2000 the Bank was heard in the matter. After hearing, it was held that the defaulted amount under the Abkari arrears is Rs. 3,53,281/0 + interest and the same is related to the period 1983-84. On examining the letter dated 30.6.2000 of the Assistant Excise Commissioner, Kottayam, it was found that the solvency certificate dated 28.2.1983 issued by the Tahsildar, Vaikom was used by the defaulter for bidding T.S. Nos. 17 and 23/83-84 of Kuruvilangadu Range and that the property in question was included in the solvency certificate. Thus, it is clear that the defaulter participated in the auction on the strength of the solvency certificate which includes the property in question. After perusing the sale records, it was found that the Tahsildar Vaikom had observed all the legal formalities in conducting the sale and no procedural irregularity has been noticed. Thus, the auction sale held on 7.3.2003 was confirmed in the name of the 12th respondent. The Commissioner, Land Revenue, on revision, by Ext. P4 proceedings dated 1.4.2004, confirmed the said finding. The matter was re-examined by him with relevant records and he was satisfied that there was no procedural irregularity in the matter.

19. As I have already found the solvency certificate did include the property in question based on which the defaulter bid in auction the toddy shops for the year 1983-84 towards which abkari dues are in arrears, which

is a public revenue on land and hence liable to be recovered under the Revenue Recovery Act. I do not also find any material irregularity in the manner of conducting the sale of the property in question.

20. In the circumstances, there is no merit in the writ petition. Accordingly, the same is dismissed.

The original records produced as per memo dated 1st December, 2006 shall be returned to the Government through the Government Pleader after obtaining proper receipt after the expiry of 30 days from today and in case no appeal is filed.

P.R. RAMAN,
JUDGE.

knc/-